THE CONTRIBUTION OF AFRICA TO THE DEVELOPMENT OF INTERNATIONAL TRADE AND INTELLECTUAL PROPERTY LAW

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I happen to be from Ghana, and my Professor in Law School at the University of Ghana was also George, Ofosu Amaah. Anytime we discussed any topic, no matter whether it was human rights, humanitarian law, etc., George Ofosu Amaah always asked: «What has Abi-Saab said on this?». And then one of my classmates one day got so upset he just shouted in class: «Who the hell is Abi-Saab?». This was an indication of the extent to which even in Ghana, our professors were already well convinced that Georges Abi-Saab was, in international law, the pre-eminent authority who could pronounce on any subject in international law, so what he had said was legitimate. So long before I came to Geneva, your name was firmly in my mind, and when I finally met you, it was a pleasure and an honor. Another anecdote, since I am probably one of the few people who did not have the great privilege of having you teach me directly. Last night when I left work I said to my colleagues: «I won’t be here tomorrow. I am going to this colloquium for Georges Abi-Saab». And then one suddenly commented: «Oh! Abi-Saab?». I said: «Yes. Why, do you know him?» She said: «No, but about twenty years ago I was doing a thesis on humanitarian law. I had no idea who was Abi-Saab except that I had seen he had written a lot of things on humanitarian law, not just him but also Rosemary Abi-Saab. I needed to get some expertise

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from either Georges or Rosemary and I sent questions to a mutual friend to be passed on to him. » Georges actually responded to her questions. So she says she is convinced you have absolutely no idea who she is, but she wants me to say thank you for having sent responses to her twenty years ago.

I thought since Judge Yusuf has been kind enough to tell us about the Public Law of Africa, I would concentrate on a topic that I do not think falls within this definition of Public Law of Africa. This is the issue relating to trade, public health, and intellectual property. I do not think it falls within public law but the reason I think I should mention it is, in my view, this is the one area where Africa is likely going to make the biggest impact in international law, as we look at the future of international law. That is why I am talking about trade, intellectual property, and public health. And in that area, there are three issues I want to mention.

The first one is the issue pertaining to the protection of traditional knowledge, traditional cultural expressions and genetic resources. Here, the issue is simple: over 80% of the world’s genetic resources, are found in African and other developing countries. So the African and other developing countries want to make sure they get some type of recognition or protection for these genetic resources. And they have been using international fora such as WIPO, WTO, UNCTAD, FAO, and Secretariat of the Convention on Biological Diversity to try introducing certain concepts that would result in providing adequate protection for intellectual property in this specific area. What they have done is they have started discussions as far as 2000, and this is why I am talking about WIPO, not about WTO, simply because I see the member states in WIPO interact more easily than other member states in other international organizations. In WIPO, what we call an intergovernmental committee has for over twelve years now been discussing how best to provide protection for traditional knowledge, traditional cultural expressions or folklore and genetic resources.

In the discussions several countries just say: « Forget this. You will never have it. There will never be protection for traditional knowledge because it is not intellectual property, it does not fit within the paradigm of intellectual property ». Well, twelve years down the line, we are at a stage where the General Assembly of WIPO is getting